

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL DURAN,
Petitioner,
v.
GAVIN NEWSOM,
Respondent.

Case No. 2:23-cv-01910-JDP (HC)
ORDER

Petitioner, a state prisoner represented by counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. He argues that no evidence supports the state’s denial of his parole. After reviewing his initial petition, I find that it fails to state a cognizable claim. I will give him leave to amend before recommending the petition be dismissed, however.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner argues that no evidence supports the state’s denial of his parole. ECF No. 1 at 5-7. In so doing, he cites the Ninth Circuit’s decision in *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc), for the proposition that “some evidence” must support the state’s denial of

1 parole. ECF No. 1 at 7. That case was overruled by the Supreme Court in *Swarthout v. Cook*,
2 562 U.S. 216 (2011). There, the Supreme Court held that, in the context of parole, the
3 constitution requires only that the prisoner denied parole be afforded an opportunity to be heard
4 and a statement of reasons as to why parole was denied. *Id.* at 220. Petitioner does not appear to
5 argue that he did not receive the minimum procedure that he was due.

6 I will give petitioner an opportunity to amend and explain why this action should still
7 proceed.

8 It is ORDERED that within thirty days of this order's entry, petitioner may file an
9 amended habeas petition. If he does not, I will recommend this action be dismissed.

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11 IT IS SO ORDERED.

12 Dated: November 30, 2023

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14 JEREMY D. PETERSON
15 UNITED STATES MAGISTRATE JUDGE
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